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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

CLIFF ROSS SADLER,

Defendant and Appellant.

F057034

(Super. Ct. No. 08CM3374)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kings County. Harry Nicholas Papadakis, Judge. (Retired Judge of the Fresno Sup. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.)

Sylvia Whatley Beckham, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Louis M. Vasquez, Kathleen A. McKenna and William K. Kim, Deputy Attorneys General, for Plaintiff and Respondent.

* Before Vartabedian, Acting P.J., Cornell, J. and Gomes, J.

Defendant Cliff Ross Sadler entered a plea of no contest to one count of making a criminal threat (Pen. Code, § 422); three counts from the same complaint were dismissed.¹ It was agreed that he would receive a term of eight months (one-third the midterm of two years), to run consecutive to any other term currently being served. Defendant appeals, claiming the trial court failed to pronounce a single combined aggregate term and the abstract of judgment is incorrect.

Discussion

“[W]hen a defendant is sentenced consecutively for multiple convictions occurring in different proceedings, the court designates the longest term as the principal term, and any other consecutive term is considered a subordinate term, for which the sentence can be no more than one-third the midterm for the offense.” (*People v. Marichalar* (2003) 144 Cal.App.4th 1331, 1336-1337.) Penal Code section 1170.1, subdivision (a) and California Rules of Court, rule 4.452 require the trial court to pronounce a single aggregate term when imposing a determinate sentence consecutive to any prior determinate sentence or sentences, whether previously imposed by that court or a different court. “If a determinate sentence is imposed pursuant to [Penal Code] section 1170.1(a) consecutive to one or more determinate sentences imposed previously...: [¶] (1) the sentences on all determinately sentenced counts ... shall be combined *as though they were all counts in the current case.*” (*People v. Baker* (2002) 144 Cal.App.4th 1320, 1328.)

The trial court is under a duty to determine how consecutive terms for multiple offenses should be combined in accordance with Penal Code section 1170.1 and is further required to furnish the appropriate authorities with an abstract of judgment reflecting the sentence as computed. (*People v. Montalvo* (1982) 128 Cal.App.3d 57, 64.)

¹ The facts are not in dispute. On August 22, 2008, defendant threatened to burn down the home of Annette Gomes. The threat was unequivocal, unconditional, immediate and specific and placed her in sustained fear.

The plea agreement here was that defendant would receive an eight-month state prison sentence consecutive to any other term being served. Although the People offered to provide the case number from the case where the “other term” was being served, the court did not accept the offer of information and the record does not reflect the case number of the other case or any other information about the case and/or the sentence imposed in that case. The lack of information in the record is compounded by the fact defendant waived the preparation of a probation report and was sentenced immediately after entering his plea. The parties refer to the “other case” by number in their briefs, but we have not been asked to take judicial notice of the case nor is there anything in the record before us definitively establishing the specifics regarding the “other case.”

The trial court erred in not pronouncing a total aggregate sentence. In addition, the trial court erred in not preparing an abstract of judgment reflecting the single aggregate term. We further note the trial court utilized the wrong form when it prepared the abstract of judgment. The court used form CR-290.1 (from the Judicial Council of California). This form states it is “[n]ot to be used for multiple count convictions or for 1/3 consecutive sentences.”

Disposition

The conviction is affirmed. The sentence is vacated and the matter is remanded with directions to the trial court to impose an aggregate sentence in compliance with the plea agreement and as required by Penal Code section 1170.1, subdivision (a) and California Rules of Court, rule 4.452. The trial court shall also prepare and distribute as appropriate a new abstract of judgment.